In a Texas case a bank, an indorsee in due course of a note, learned of fraud and failure of consideration between the original parties. At maturity it had in its hands sufficient deposits of the payee-indorser to cover the note. It was not allowed to recover against the maker. *Union National Bank* v. *Menefee*, 134 S. W. 822 (Tex., Ct. Civ. App.).[20] Under these facts the payee-indorser should ultimately pay the amount of the note. So here again he may be regarded as substantially the principal debtor with the maker as surety. By suretyship law, the creditor must in certain cases take some slight affirmative action against the principal.[21] And the better view would seem to be that where, as in this case, the creditor has merely to charge the amount of the debt against the principal on its books, and where such action is of vital importance to the surety, the creditor's failure to act will discharge the surety.[22] The only safe thing for the holder to do, therefore, is, upon any suspicion of a defense between the original parties, to assert at maturity its lien over the payee's funds.[23]

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# RECENT CASES.

ACCRETION — APPLICABILITY TO WATERS ACTUALLY NON-NAVIGABLE. — The coast lands of the plaintiff and the defendant were divided by an inlet. The maximum depths of its channel were seven feet at high tide, and three feet at low. It shifted laterally at the rate of four hundred feet each year, so that it ran through the defendant's land; the process being one of erosion on one side of the inlet and deposit of sand on the other. *Held*, that the plaintiff has no title to the strip between the former and present channels of the inlet. *Town of Hempstead* v. *Lawrence*, 70 N. Y. Misc. 52 (Sup. Ct.).

Common-law courts have advanced at least seven distinct grounds for the right of acquiring land by accretion: (1) *De minimis non curat lex*. See 2 BL. COMM. 262; *Lovingston* v. *County of St. Clair*, 64 Ill. 56, 59. But by accretion *minima* become *magnum*. See *Attorney-General* v. *Chambers*, 4 De G. & J. 55, 68. (2) It is impossible to identify small additions to land daily. See *Foster* v. *Wright*, 4 C. P. D. 438, 446. (3) The law disregards things of imperceptible growth. See *In the Matter of the Hull & Selby Ry.*, 5 M. & W. 327, 333. (4) Acquisition of title by accretion compensates for loss of title by erosion. See 2 BL. COMM. 262; *Peuker* v. *Canter*, 62 Kan. 363, 372. (5) It is compensation for the expense of preventing erosion. See *Gifford* v. *Yarborough*, 5 Bing. 163, 166. *Contra*, *Municipality No. 2 v. Orleans Cotton Press*, 18 La. 122, 228, 243. (6) Changing a littoral into an inland owner is inequitable. See *Steers* v. *City of Brooklyn*, 101 N. Y. 51, 56; *Lamprey* v. *State*, 52 Minn. 181, 197. (7) Otherwise there would be numberless unoccupied littoral gores. See *Gifford* v. *Yarborough*, *supra*. Based upon any of these grounds, the doctrine can apply to waters actually non-navigable. And decisions have so ap-

[20] This doctrine seems to be law only in Texas. Van Winkle Gin & Machinery Co. *v.* Bank, 89 Tex. 147. *Contra*, Sloan *v.* Union Banking Co., 67 Pa. St. 470; Hoge *v.* Lansing, 35 N. Y. 136. See Bank *v.* Peltz, 176 Pa. St. 513, 518.

[21] See 1 BRANDT, SURETYSHIP, §§ 487, 494, 495, 498, 501–505.

[22] McDowell *v.* Bank, 1 Har. (Del.) 369; Commercial Nat. Bank *v.* Henniger, 105 Pa. St. 496. *Contra*, Strong *v.* Foster, 17 C. B. 201; Voss *v.* German American Bank, 83 Ill. 599.

[23] See 9 HARV. L. REV. 146.

plied it. *Niehaus* v. *Shepherd*, 26 Oh. St. 40; *Foster* v. *Wright*, *supra*. But if in the principal case the shifting of the inlet was perceptible moment by moment, the decision is correct. *Mulry* v. *Norton*, 100 N. Y. 424. See BRACTON, 2. 2. 1.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — SUMMARY PROCEDURE. — Just before the filing of a petition in bankruptcy the treasurer of the bankrupt corporation took money of the corporation and left the jurisdiction of the bankruptcy court. He returned a year later. The referee found that he had a part of the money still in his possession, though he denied this. *Held*, that the bankruptcy court may make a summary order that he turn over this money to the trustee. *In re Meier*, 27 Am. B. Rep. 272 (C. C. A., Eighth Circ.).

The Bankruptcy Act allows summary procedure to compel a bankrupt to turn over to his trustee property in his possession. BANKRUPTCY ACT OF 1898, § 2 (7), (13). It was a slight extension to allow such procedure against an agent of the bankrupt. *Mueller* v. *Nugent*, 184 U. S. 1. See *In re Wells*, 114 Fed. 222. But the federal cases, following the *dictum* of the Supreme Court in the case cited, have gone to this extent: In the case of any fraudulent conveyance or preference the trustee may petition for a summary order against the party benefited. The petition should allege that the defendant has but a colorable claim. *In re Scherber*, 131 Fed. 121; *In re Michie*, 116 Fed. 749. If the referee finds that the defendant has the property in his possession and has no substantial claim to it, he may order it to be handed over. *In re Kane*, 131 Fed. 386. *Cf. In re Laplane Condensed Milk Co.*, 145 Fed. 1013. The present case is within this rule. But if the defendant sets up a claim of title to the property and supports it by some evidence, there can be no summary order, even though the referee is convinced that the claim is fraudulent. *Jaquith* v. *Rowley*, 188 U. S. 620; *Cooney* v. *Collins*, 176 Fed. 189. But see *In re Knickerbocker*, 121 Fed. 1004, 1006. The rule even so limited is without statutory foundation, and must be regarded as judicial legislation.

BANKRUPTCY — PARTNERSHIP AND INDIVIDUAL CLAIMS AND ASSETS — ENTITY THEORY. — A partnership and the partners were in bankruptcy. The partnership estate proved against the individual estate of a partner on a note. *Held*, that no dividend can be paid on this claim till all the individual creditors of that partner have been paid. *In re Telfer*, 184 Fed. 224 (C. C. A., Sixth Circ.).

A partnership and the partners were in bankruptcy. The estate of a partner proved against the partnership estate for money lent. *Held*, that no dividend can be paid on this claim till all the creditors of the partnership have been paid. *In re Effinger*, 184 Fed. 728 (Dist. Ct., D. Ind.).

These cases are in accord with previous authority in their construction of the provisions of the Bankruptcy Act regarding the administration of the estates of bankrupt partnerships. *In re Rice*, 164 Fed. 509. See *In re Denning*, 114 Fed. 219, 221; *In re Henderson*, 142 Fed. 588, 590. They decide that § 5 *f*, stating the old rule, giving partnership assets to partnership creditors, individual assets to individual creditors, and any surplus from either estate to the creditors of the other, governs the distribution, and that § 5 *g* allowing the partnership and individual estates to prove against each other, merely explains a method for distributing the surplus. The result is thus the same as that reached under the Act of 1867, which had no section corresponding to § 5 *g* of the present act. See *Amswick* v. *Bean*, 22 Wall. (U. S.) 395, 402. The Act of 1898 adopts in a general way the entity theory of partnership. BANKRUPTCY ACT OF 1898, §§ 1 (19), 5 *a*. See *In re Bertenshaw*, 157 Fed. 363, 365. The federal courts might have carried out the theory more logically by giving § 5 *g* the effect of making the individual and partnership estates creditors of each other,